B5

DATE: DEC 2 0 2011   OFFICE: NEBRASKA SERVICE CENTER   FILE:
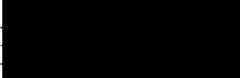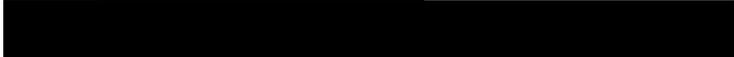
IN RE: Petitioner:
              Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced
              Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration
              and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:
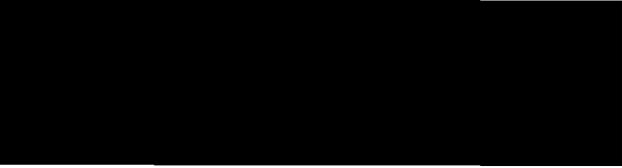
INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents
related to this matter have been returned to the office that originally decided your case. Please be advised that
any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional
information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The
specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be
submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion,
with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed
within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,
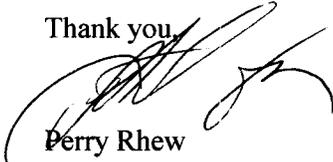
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a tool and die, metal-stamping firm. It seeks to employ the beneficiary permanently in the United States as an industrial organizational counselor pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to establish its continuing financial ability to pay the proffered wage, and denied the petition, accordingly.

The AAO issued a request for evidence (RFE) on September 22, 2011, relevant to the petitioner's ability to pay the proffered wage of $53,040 per year pursuant to the requirements of 8 C.F.R. 204.5(g)(2). The AAO also solicited evidence from the petitioner pertinent to the beneficiary's educational credentials. The AAO explained that had consulted a database that did not equate the beneficiary's credentials to a U.S. master's degree and the evidence in the record of proceeding as currently constituted did not support a determination that the petitioner intended the actual minimum requirements of the proffered position to include alternatives to a Master's degree such as the credentials held by the beneficiary.[1]

In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Because the petitioner failed to respond to the RFE, the AAO is dismissing the appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

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[1] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).